AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Consulting Agreement; MJM Project Counsulting LLC

Action Requested: Motion

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Please see the attached project description and consulting agreement.

Fiscal Impact: $32,000, anticipated

Submitted by: Katherine Haase for Matthew Birnie **Submitter's Email Address:** khaase@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No fiscal impact to County as total cost to be paid by the Library District. No concerns, ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 5/17/2019

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 5/17/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 5/17/2019 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\emense Discharge Date: 5/17/2019

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 5/21/2019

Revised April 2015

Gunnison County Library District Library Development Project – Project Consultant/Owner's Representation Services Requested - 7 May 2019

-Background:

The Library District, under the guidance and project development planning and management of Drew Brookhart, Executive Director, is in need of the support and guidance of an Owner's Representative to assist in the development process via provision of project consulting services of an Owner's Project Consultant as recommended by the County Manager of Gunnison County. Gunnison County is the owner of the existing County Library located in the City of Gunnison, Colorado, and, pending construction and commencement of operation of a new Library facility after development, will retain ownership of the new library facility to be developed (i.e., the "Project").

The Executive Director and Board of the Library District plan to retain the remaining project planning, programming and early design phase services of the architect firm of Anderson Hallas Architects of Golden, Colorado. A contract for services of this architect firm is pending execution by the parties as of the date of this writing, and is expected to be executed on or about 23 May 2019.

The pending agreement contains an expression of an anticipated scope of services of the architect through completion of the project schematic design phase and solicitation of a suitable Construction Manager/General Contractor for construction delivery of the building project. An estimate of the eventual cost of construction of the building project is pending the results of the aforementioned remaining project planning, programming and conceptual design phase results. Project development past the anticipated schematic design phase to be undertaken by this architect under provisions of the pending contract will be contingent upon the successful results of a mill levy vote of the property owners of the County anticipated to occur in the autumn of 2019.

Upon the recommendation of the County Manager of Gunnison County to the Executive Director of the Library District, the consultant firm of MJM Project Consulting, LLC, has been requested to serve the Library District and County Commissioners as the developer and future facility owner, respectively, of the new Library facility as Owner's Representative/Project Development Consultant; and MJM Project Consulting, LLC has agreed to provide such assistance via the Executive Director of the Library District, under the terms and conditions of a pending agreement between the parties.

-Anticipated Scope of Services of Project Consultant:

It is anticipated that the involvement of the Project Consultant on the Project will be similar to those provided by the Project Consultant to the County on the two earlier project developments involving the development of three separate building facilities, whereon the Project Consultant provided project support services to the County. Initially, and pending further refinement and understanding of more specific project needs through generation of the schematic design by the architect, the following major essential service scope elements are anticipated to form the core of involvement of the Project Consultant:

- Pending contract review and potential final refinement of the pending Owner/Architect Agreement for Architect Services through Schematic Design
- Generation of proposal solicitation documents and generation of the necessary additional Owner/Architect Agreement for retaining an Architect for the project for architect services pertaining to the potential Design Development, Construction Documents Phases of the project subsequent to the Schematic Design Phase; and the Construction Administration and Building Facility Systems Commissioning Phases of the project, via the adaptation and application of the delivery process methodology and documents employed on the previous building development project endeavors on which the Project Consultant served the County of Gunnison Colorado.

- Generation of solicitation documents and generation of the necessary Owner/CMGC Agreement for retaining a builder Construction Manager/General Contractor for the project via the adaptation and application of the delivery process methodology and documents employed on the previous building development project endeavors on which the Project Consultant served the County.
- Said project delivery methodology shall be via the CM/GC and Architect at-risk for guaranteed maximum construction price within Owner's stipulated budget for construction cost yet to be confirmed
- Generation of solicitation and selection elements, and implementation of the process of retaining the CM/GC
- Support and coordinate the pre-construction process to an agreed upon initial guaranteed maximum price (IGMP) as mutually developed by the architect and CM/GC toward consideration and approval of the Owner
- Further support and assist the Executive Director, County Manager and otherwise involved County and Library District administrative staff on an as needed and requested basis.

-Anticipated Timeline/Milestones:

- Prior to May 23rd, meet collectively with Executive Director of the Library, County Manager and County Sustainable Operations Director for purposes of agreement upon project plan elements moving forward
- May 23rd – Meeting with Architect for purposes of introductions of project participants; to review proposed scope of architect services toward anticipated execution of the Owner/Architect Agreement; and to outline anticipated next steps involving application of the planned project delivery methodology as anticipated
- November 2019 – County Referendum regarding establishment of a mil levy increase for purposes of County funding of Library project beyond schematic design phase
- Final Project planning programming, conceptual design and schematic design phase schedule activities and milestones per pending agreement between Gunnison County Library District and Anderson Hallas Architects.
- Generation of CM/GC solicitation documents and draft Owner/CMGC Agreement and Conditions of the Contract for Construction to commence after final project programming phase and during conceptual design phase
- TBD – CM/GC RFQ and RFP issuances (request proposals based on Schematic Design Documents)
- Continue, as Project Consultant, on an as-requested basis via contract extension amendment, contingent upon voter approval of the project funding mill levy increase, through project design development, cost estimate updating via the CM/GC, Value Engineering via the CM/GC and Architect, and phasing of the project as an integrated design/construction project with generation of a Final Guaranteed Maximum Price to be proposed by the CM/GC toward Owner acceptance and approval.

END

STANDARD CONSULTING AGREEMENT FOR OWNER'S REPRESENTATION SERVICES

This Consulting Agreement is entered into by and between ***MJM Project Consulting, LLC*** hereinafter referred to as "Consultant" and, collectively, the Gunnison County Library District Board of Trustees, and the Board of County Commissioners of the County of Gunnison, Colorado, hereinafter referred to, collectively, as "Clients".

1. The Consultant agrees to provide consulting support services as an independent contractor, by rendering its opinion to the Clients in accordance with the Clients' request for advice, guidance and recommendations in support of their development, direction and management of their real property development project, the **Gunnison County Library Project ("Project")** located in the City of Gunnison, Colorado. This service shall be provided in consideration of, and on a Fee and Reimbursable expense basis in accordance with the Fee Schedule incorporated and included with this agreement as "Exhibit A."
   a. The Consultant agrees that it will adhere to the following procedures pursuant this Agreement:
      (1) The Consultant shall report to the Clients, via the Executive Director of the Gunnison County Library, who is the Project Manager of the Library Development Project, findings and conclusions developed during research of the various phases of its performance hereunder, and provide, as required, support and assistance as requested by the Clients.
      (2) All services performed under this Agreement shall be subject to review by the Clients at all times.
      (3) All efforts in performance of this Agreement by the Consultant shall be performed at the direction of the Clients' Representative and single point of contact, which has been designated as **Drew Brookhart, Gunnison County Library District Executive Director.**
   b. **<u>The parties acknowledge and agree that the Consultant's representation as Project Consultant commenced in performance of this Agreement on 8 May 2019</u>** and shall continue hereunder until such time as determined by agreement of the parties, currently anticipated to be during the last half of the month of November 2019. The completion date of services may be changed by agreement of the parties. In the event that services continue beyond a specific completion date, Clients shall continue to compensate the Consultant per the terms and conditions of this Agreement.

2. In support of the Consultant's services, the Clients agrees that they will provide the Consultant with all necessary data, plans, records, and information gathered to perform this service and that the Clients will make available specific representatives of organization staff, and other consultants to assist the Consultant on an as needed basis at no cost to the Consultant.

3. In consideration of the services provided by the Consultant, the Library District shall pay the Consultant in accordance with the following provision:
   a. The Library District shall pay the Consultant for actual services performed hereunder in accordance with the Fee Schedule, which is attached to this agreement in **"Exhibit A", initialed for and on behalf of the respective parties as dated the same date as this Agreement**.
   b. The Library District shall compensate the Consultant for reimbursable expenses in accordance with the terms defined in the attached "Exhibit A".

4. The following payment provisions shall apply:
   a. In consideration for the above, Consultant shall be paid for work performed within (15) days of Clients' receipt of invoice, sent to the Clients' Representative. Consultant shall invoice for services on a monthly basis.
   b. The Consultant shall not be required to perform any work for the Clients when any amount due and payable hereunder by the Clients shall be in default.
   c. Interest in the amount of 1 ½% per month shall be applied to any unpaid balances beyond the (15) day payment terms of this agreement.

5. It is understood and agreed that all information and/or data which is generated by the Consultant, and/or which is obtained by the Consultant as a result of this agreement with the Clients, shall be considered confidential to the extent permitted by law. Unless specified otherwise by the Clients' authorized Representative, the Consultant shall not disclose, any such information and/or data to any other person, firm or organization. Information and/or data created by the Consultant shall remain the property of the Clients, and Consultant is authorized to retain a copy of such Consultants project documents for its confidential files.

6. In the event that the Clients shall make a determination, in the exercise of business judgment, to change, alter, amend or modify any material or documents prepared by the Consultant pursuant to this Agreement, the Consultant shall not be responsible or liable for the consequences of such action on the part of the Clients.

7. The Consultant's role is to assist the Clients, working through and in concert with the Clients' Representative, the County Manager, the County Attorney and the Clients' Representative's staff members working on the Project, as **an independent contractor**, in the performance of certain Clients' Representative's project development management and project executive decision-making and administrative duties and responsibilities for, and on behalf of the Ownership of the Project. The Clients carry a responsibility for effectively communicating to the Consultant, Clients' desires and clear directions, via the Clients' Representative, with respect to desired actions to be taken toward the implementation of Clients' goals and objectives and decisions made as executive managing director of the Project. In response thereto, Consultant will strive on a best effort basis in communication and facilitation, toward goals of achievement, by the Clients' other contracted parties employed during the Phases of the Project, of Clients' interests and project goals and objectives established by the Clients. Consultant does not provide real property development pro forma generation, cost estimating, scheduling (other than in consultation with the Clients' Representative in setting major project milestones), appraising, legal, architectural programming, architectural design, engineering, geotechnical, space planning, systems commissioning, testing, inspection or similar professional services. The consultant does not provide independent direction to the Clients' other professional consultants or internal company staff members.

   Contractor acknowledges and agrees that Contractor is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County or the Library District. Further, Contractor is obligated to pay federal and state income tax on any moneys paid it related to the services.

8. As a Consultant, there is no promise made of successful influence over, nor guarantee of cost, quality, overall project or individual project intended phase(s) schedule duration adherence, or safety considerations of the Project, nor for successful implementation by the Clients' Representative and/or others, or successful application of any processes or procedures recommended by the Consultant for application or utilization on the Project. The Consultant's activities are those of providing advice and recommendations, and efforts toward facilitation, coordination and as communicator on behalf of the Clients, in support of, and as advisor to the Clients' Representative, Project staff members working on the Project, and the Clients' attorney(s). The Consultant's activities are those of a facilitator, via support of, and council to the Clients' Representative, of the programming, design, preconstruction and construction processes employed on the project.

9. The Consultant is not an attorney and is not the Project Manager or Project Director. With regard to any work or services performed by the Consultant in the generation, drafting, preparation or any other involvement with any service solicitation documents, contractual documents and forms of agreements intended to be made for purposes of establishing legal contracts between the Clients and any other of their professional consultants, builders or other parties to contracts with the Clients, it is the Clients' responsibility and obligation to submit such documents for review toward approval of, or separate modification by the Clients' own attorney(s) or other legal or other representatives and interested parties; and any other parties to which the Clients are responsible for obtaining such or related approval(s).

Consultant can, upon Clients' direction, consult with said attorney(s) or other parties. It is the Clients' responsibility alone to obtain any necessary permission, which may or may not arise, to utilize, and to pay any associated fees or costs which may be required for the use of any proprietary draft forms of contract and any other legal documents such as, but not limited to standard AIA documents or similar commonly utilized design and construction industry forms, formats and/or templates, to which modifications and other changes are or may be made for use on, or are otherwise utilized in application on the Project.

10. The Consultant has no authority to assume or create any commitment or obligation on behalf of or to bind Clients in any respect whatsoever and shall not represent that it has such authority or otherwise hold itself out as having such authority.

11. Contractor agrees to indemnify, defend and hold harmless Gunnison County Library District, its Board of Trustees, Gunnison County, its Commissioners, their agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts, errors or omissions of Contractor or its employees, subcontractors or agents in connection with this Agreement. This provision shall survive any termination or expiration of this Agreement with respect to any liability, injury or damage occurring prior to such termination.

12. In the event that any dispute shall arise with regard to any provision or provisions of this Agreement, the Agreement shall be subject to, and shall be interpreted in accordance with, the laws of the State of Colorado. Jurisdiction shall be in the State of Colorado, and venue shall lie in the County of Gunnison, Colorado.

13. In the event that the Consultant is required to provide consulting services beyond the term of this agreement, or support the Project team, or provide support as a matter of resolution of the completion and/or close out of services, or provide added services including support for legal action, the Consultant will be compensated by the Clients based on the hourly rates established in Exhibit A hereof, plus reimbursable expenses.

14. This Agreement may be terminated at any time by either party upon thirty (30) days written notification or otherwise by mutual consent of the parties. Clients will compensate Consultant for reasonable costs, for demobilization of services, that are set forth in Exhibit A in the event that the Consultants services are terminated without proper and timely notice. In the event that any party to this Agreement shall be deemed to be in default according to the terms and conditions of the Agreement, such party shall have an opportunity to cure said default; in the event that any such default is not cured within (10) days of the date of the act, event or occurrence of the default, then this Agreement shall be terminated and the parties may pursue their respective remedies pursuant to this Agreement.

15. The Clients, by executing this agreement, accept that the Clients shall not hire away any staff individual from the Consultant. In the event that the Clients do hire a staff individual(s) within 12 months of the Consultant providing services to the Clients, the Clients shall compensate the Consultant at a rate of 75% of the staff individual's annual base salary. This compensation is due and payable within 30 days of the staff individual's 1st day of work with the Clients. This compensation shall apply to any and all of the Clients' business ventures.

16. **Clients shall require the Project Programming Entity, Architect, Construction Manager/General Contractor and all Subcontractors to name the Clients and Consultant as additional insured under their respective general liability policies, including completed operations coverage provided for the Project.** Products and Completed Operations insurance shall, at a minimum, be maintained by such other parties per the State statutes where the work is being performed. In the event of an OCIP program the Consultant shall be a named insured.

17. This Agreement constitutes the entire understanding of the parties hereto and supersedes all prior proposals, arrangements and/or understandings between the parties hereto with regard to the Project. No statements or representations by any of the three parties, which are contrary to, or in addition to, the terms and conditions of this Agreement shall be of any force or effort. This Agreement may not be altered, changed, amended, or modified except by mutual agreement of the parties thereto in writing. If any clause or provision of this Agreement shall be held to be invalid in whole or in part, then the remaining clauses and provisions, or portions thereof, shall nevertheless be and remain in full force and effect. No amendment, alteration, modification of or addition to this Agreement shall be valid or binding unless expressed in writing and signed by the parties to be bound thereby.

18. Each party hereto represents and warrants that the person executing this Agreement on behalf of such party is authorized to sign this Agreement on behalf of such party.

19. It is also acknowledged by the Clients that the Consultant has no control over municipalities, utilities, other regulatory agencies, etc., as may affect performance of the services of the Consultant. Nothing in this Agreement is, or shall be construed to be, a waiver, in whole or part, by Gunnison County of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

In witness whereof the parties acknowledge and execute this Agreement on this _____ day of May, 2019.

CONSULTANT:
MJM Project Consulting, LLC

By: _____
Michael J. Mismash
Title: Principal

GUNNISON COUNTY:
Board of the Library District
the County of Gunnison, Colorado

By: _____
Drew Brookhart
Title: Executive Director
Of the Library

GUNNISON COUNTY
Board of County Commissioners of
the County of Gunnison, Colorado

By: _____
Mathew Birnie
County Manager

ATTEST:

_____
Deputy County Clerk

End of Agreement

"EXHIBIT A"
To

Consulting Agreement Between MJM Project Consulting LLC, and the Board of the Gunnison County Library District and Board of County Commissioners of the County of Gunnison, Colorado For the Development of the Gunnison County Library Project

1. FEE SCHEDULE:

a. The hourly, daily and weekly billing rates for Client requested and authorized Tasks and Services of Consultant, <u>that the Consultant, may choose, at his sole discretion, to accept or reject,</u> to be provided by Consultant for this Project, shall be applied via "hourly rate," "daily rate" or "weekly rate" measure of task/service-applied compensation, and shall be justified for Client's consideration toward approval for payment via supporting Timesheet indicating time expended by Consultant working on such service tasks undertaken by the Consultant on Client's behalf, supporting monthly invoices for payment. Said billing rates are as follows:

- MJMPC LLC Principal — Hourly Rate: $ 125/hour
- MJMPC LLC Principal — Daily Rate: $ 1,000/8 hour workday
- MJMPC LLC Principal — Weekly Rate: $ 5,000/5 day workweek

The Anticipated, Not-to-Be-Exceeded ("NTBE") without prior acknowledgement by the Client, Billable Monthly Fee compensation amount (i.e. "top-set" monthly billable amount) established is:

- MJMPC LLC Principal — (NTBE) Monthly Rate* — $ **<u>4,267</u>**/month

Per ***Outline of "Project Consultant/Owner's Representation Services Requested," as verbally described to the Consultant by the Client on 7 May 2019, as attached to this Exhibit A as typed reference of the anticipated core services to be provided. <u>Term of Consultant Service is for Final Programming/Early Design & Preconstruction Phase of the Project</u>, from services commencement on 13 May 2019 and projected to extend through establishment by agreement between the Client and it's Construction Manager General Contractor (CM/GC) of choice, of the Project Initial Guaranteed Maximum Price (IGMP) of Construction, to be based upon the Client-Approved Schematic Design level of Construction Contract Documents prepared by Client's Architect of choice. The above expressed Monthly Rate maximum billable amount of $4,267 is based upon the Projected Early Design/Preconstruction Phase duration of approximately 7.5 months (32 weeks), commencing on or about 13 May 2019 and projected as ending on or about 21 December 2019, or approximately at the completion of the Schematic Design Phase of services of the architect as currently anticipated. Thus, the total maximum projected Fee for Consultant Services during the Final Planning, Programming/Early Design & Preconstruction Phase of the Project, as set forth above, is <u>$32,000</u> ($125/hour billing rate X anticipated average maximum of 8 hours per workweek X 32 weeks. Note: Some weeks will require more concentrated application of consultant time, particularly during periods that will involve***

the drafting of Owner/Architect Contract; and drafting of CM/GC solicitation documents and Owner/CMGC Contract generation, etc.)

b. Additional Services billing rates are as follows:

- Any Litigation/Court-related Support Services (requested by Client) $ 200/hour

c. The billing rates will be applied to time spent working directly on the project and will include reasonable vehicular travel time to and from meetings in Gunnison, Colorado or elsewhere and the Consultant's home office in Gunnison County.

d. Consultant retains the right to reasonably increase these billing rate(s) and basis for reimbursement of expenses at the beginning of each calendar year and Client agrees to not withhold its approval of such reasonable increases.

2. SCOPE OF SERVICES:

The Scope of Services to be provided by the Consultant is as follows, for the ***Final Planning, Programming/Early Design & Preconstruction Phase of the Project***, as defined above:

Scope of services to be provided (as interpreted by Consultant from description provided verbally by the Executive Director of the Library District to Consultant via email on 9 March 2019):

- Contract review and any further development, if needed, for Client retention of a project architect; and to assist Client to engage project CM/GC and Architect intended to be mutually at-risk for the adherence to the eventually established and Client-Approved Final Guaranteed Maximum Price (FGMP) for Total Project Construction Cost to Client
- Provide leadership in development and facilitation of Owner's solicitation and selection process for CM/GC engagement
- Contract development for Client retention of the project CM/GC
- Provide leadership of pre-construction process to mutually agreed upon (initial) guaranteed maximum price ("IGMP") via Owner-CM/GC Contract for construction
- Client's expressed Budget for Total Project Construction Cost as to be provided to its Project Architect to which budget amount said Architect will be requested to design the Project, and which amount shall be the intended target not to be exceeded in project construction delivery by the eventual CM/GC is $ 10 million.

Potential continuing Consultant involvement and basis of payment for Consultant services on the Project on behalf of the Client during Design Phases subsequent to the completion of a Schematic Design, if approved by the Client, and the establishment of the IGMP, shall be separately negotiated between Consultant and Client pending decision of Client to proceed with design phases subsequent to Schematic Design, and the Construction Development of the Project; and the Consultant's decision to continue to offer provision of further consulting services during such additional Design and Construction Phases beyond Client-Approved Schematic Design and IGMP establishment.

3. REIMBURSABLE EXPENSES:

a. Additional Services outside of the scope set forth above, if acceptable to and provided by the Consultant, if not compensated via established Hourly, Daily or Weekly Rates, as set forth above in item 1.a., shall be charged at actual costs incurred plus a mark-up of 10%; and any Reimbursable Expenses related thereto provided through the Consultant shall be reimbursed by the Client at actual cost.

b. Included in Consultants' fee structure are standard overhead costs and minimal Consultant office supplies. Client will compensate Consultant for reimbursable expenses required beyond those expenses, which are considered standard for these professional consultation services. The following are considered examples of expenses beyond Consultant's standard scope and compensation via Fee:

1. Professional Liability Insurance. If Client requires Consultant to provide such coverage, if obtainable, the cost therefor shall be provided at actual cost to the Client for reimbursement without mark-up.

2. Out-of-region travel, beyond a 50 mile radius of Consultants' home/office, shall be billed by the Consultant for reimbursement by the Client on the IRS allowed cost per mile basis.

3. Costs of printed copies, including but not limited to paper and ink, of periodic reports, memos, and/or correspondence initially incurred by Consultant, if any, beyond those via electronic copy/email.

4. Costs or office supplies, postage or long distance charges, if related to Consultant's service work on the project and if initially incurred by Consultant.

5. Project specific requirements not typically included in consultants' regular tools for services. Such items may include, but are not limited to, software, hardware, and equipment not currently being utilized by Consultant, or manuals, books or standards required by specific municipalities or outside regulatory or other agencies involved within the specific project.

6. Any other direct and specific expenses required to provide services.

4. TAXES:

Consultant is responsible to pay all applicable taxes as related to this agreement. Payment of each invoice is considered full payment for services rendered for the term of the invoice, and Client is not liable for any taxes, dues, etc. beyond the amount invoiced.

Initial: _____	**Initial: _____**	**Initial: _____**
For MJM PC, LLC	**For Library District**	**For Gunnison County**
Date: _____	**Date: _____**	**Date: _____**

---End of "Exhibit A"---